

substantial harm exists if both of the following conditions exist:

(i) Directly receiving benefits can be expected to cause you serious physical or mental injury.

(ii) The possible effect of the injury would outweigh the effect of having no income to meet your basic needs.

(b) *We may delay or suspend your payments.* If we find that direct payment will cause substantial harm to you, we may delay (in the case of initial entitlement to benefits) or suspend (in the case of existing entitlement to benefits) payments for as long as one month while we try to find a suitable representative payee for you. If we do not find a payee within one month, we will pay you directly. If you are receiving disability payments and we have determined that you have a drug addiction and alcoholism condition, or you are legally incompetent, or you are under age 15, we will withhold payment until a representative payee is appointed even if it takes longer than one month. We will, however, as noted in paragraph (a)(1) of this section, allow you to present evidence to rebut the presumption that direct payment would cause you substantial harm. See § 404.2001(b)(3) for our policy on suspending benefits if you are currently receiving benefits directly.

Example 1: Substantial Harm Exists. We are unable to find a representative payee for Mr. X, a 67 year old retirement beneficiary who is an alcoholic. Based on contacts with the doctor and beneficiary, we determine that Mr. X was hospitalized recently for his drinking. Paying him directly will cause serious injury, so we may delay payment for as long as one month based on substantial harm while we locate a suitable representative payee.

Example 2: Substantial Harm Does Not Exist. We approve a claim for Mr. Y, a title II claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that Mr. Y needs assistance in managing his benefits, but we have not found a representative payee. Although we believe that Mr. Y may not use the money wisely, there is no indication that receiving funds directly would cause him substantial harm (*i.e.*, serious physical or mental injury). We must pay current benefits directly to Mr. Y while we locate a suitable representative payee.

(c) *How we pay delayed or suspended benefits.* Payment of benefits, which

were delayed or suspended pending appointment of a representative payee, can be made to you or your representative payee as a single sum or in installments when we determine that installments are in your best interest.

[69 FR 60232, Oct. 7, 2004]

§ 404.2015 Information considered in determining whether to make representative payments.

In determining whether to make representative payment we consider the following information:

(a) *Court determinations.* If we learn that a beneficiary has been found to be legally incompetent, a certified copy of the court's determination will be the basis of our determination to make representative payment.

(b) *Medical evidence.* When available, we will use medical evidence to determine if a beneficiary is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the beneficiary and his or her knowledge of the beneficiary's present condition will be used in our determination, if it includes information concerning the nature of the beneficiary's illness, the beneficiary's chances for recovery and the opinion of the physician or other medical professional as to whether the beneficiary is able to manage or direct the management of benefit payments.

(c) *Other evidence.* We will also consider any statements of relatives, friends and other people in a position to know and observe the beneficiary, which contain information helpful to us in deciding whether the beneficiary is able to manage or direct the management of benefit payments.

§ 404.2020 Information considered in selecting a representative payee.

In selecting a payee we try to select the person, agency, organization or institution that will best serve the interest of the beneficiary. In making our selection we consider—

(a) The relationship of the person to the beneficiary;

(b) The amount of interest that the person shows in the beneficiary;

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(c) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(d) Whether the potential payee has custody of the beneficiary; and

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

§ 404.2021 What is our order of preference in selecting a representative payee for you?

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interest. The preferences are:

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency which is licensed by the State, or bonded;

(2) A Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

(c) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An authorized social agency or custodial institution.

[47 FR 30472, July 14, 1982; 47 FR 32936, July 30, 1982, as amended at 69 FR 60232, Oct. 7, 2004]

§ 404.2022 Who may not serve as a representative payee?

A representative payee applicant may not serve if he/she:

(a) Has been convicted of a violation under section 208, 811 or 1632 of the Social Security Act.

(b) Has been convicted of an offense resulting in imprisonment for more than 1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk to the beneficiary and the exception is in the beneficiary's best interest.

(c) Receives title II, VIII, or XVI benefits through a representative payee.

(d) Previously served as a representative payee and was found by us, or a court of competent jurisdiction, to